

AMENDED IN SENATE MAY 3, 2000
AMENDED IN SENATE MARCH 23, 2000

SENATE BILL

No. 1599

Introduced by Senator Bowen

February 18, 2000

An act to amend Section 637.5 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1599, as amended, Bowen. Privacy: video providers.

Existing law prohibits, with prescribed exceptions, a person who owns, controls, operates, or manages a cable television corporation or leases channels on a cable system from using electronic devices to observe, listen to, record, or monitor events or conversations inside a ~~subscriber~~ *subscriber's* residence, workplace, or place of business without the subscriber's written consent, or provide any person with identifiable information, as specified, regarding any subscriber.

This bill would make the above provisions applicable to a video provider, which it would define as a person, company, or service that provides video programming *services* to a residence, as defined, for a fee, as specified. Since a violation of these provisions is among other things, a crime, the bill would impose a state-mandated local program by expanding a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 637.5 of the Penal Code is
2 amended to read:

3 637.5. (a) No person who owns, controls, operates, or
4 manages a video provider, or who leases channels on a
5 cable system shall:

6 (1) Use any electronic device to record, transmit, or
7 observe any events or listen to, record, or monitor any
8 conversations which take place inside a subscriber's
9 residence, workplace, or place of business, without
10 obtaining the express written consent of the subscriber.
11 A video provider may conduct electronic sweeps of
12 subscriber households to monitor for signal quality.

13 (2) Provide any person with any individually
14 identifiable information regarding any of its subscribers,
15 including, but not limited to, the subscriber's television
16 viewing habits, shopping choices, interests, opinions,
17 energy uses, medical information, banking data or
18 information, or any other personal or private information,
19 without the subscriber's express written consent.

20 (b) Individual subscriber viewing responses or other
21 individually identifiable information derived from
22 subscribers may be retained and used by a video provider
23 only to the extent reasonably necessary for billing
24 purposes and internal business practices, and to monitor
25 for unauthorized reception of services. A video provider
26 may compile, maintain, and distribute a list containing
27 the names and addresses of its subscribers if the list
28 contains no other individually identifiable information
29 and if subscribers are afforded the right to elect not to be
30 included on ~~such~~ the lists. However, a video provider shall
31 maintain adequate safeguards to ensure the physical



1 security and confidentiality of any such subscriber
2 information.

3 (c) A video provider shall not make individual
4 subscriber information available to government agencies
5 in the absence of legal compulsion, including, but not
6 limited to, a court order or subpoena. If requests for such
7 information are made, a video provider shall promptly
8 notify the subscriber of the nature of the request and
9 what government agency has requested the information
10 prior to responding unless otherwise prohibited from
11 doing so by law.

12 Nothing in this section shall be construed to prevent
13 local franchising authorities from obtaining information
14 necessary to monitor franchise compliance pursuant to
15 franchise or license agreements. This information shall be
16 provided so as to omit individually identifiable subscriber
17 information whenever possible. Information obtained by
18 local franchising authorities shall be used solely for
19 monitoring franchise compliance and shall not be subject
20 to the California Public Records Act (Chapter 3.5
21 (commencing with Section 6250), Division 7, Title 1,
22 Government Code).

23 (d) Any individually identifiable subscriber
24 information gathered by a video service shall be made
25 available for subscriber examination within 30 days of
26 receiving a request by a subscriber to examine ~~such the~~
27 information on the premises of the corporation. Upon a
28 reasonable showing by the subscriber that the
29 information is inaccurate, a video service shall correct
30 ~~such the~~ information. Subscribers shall bear all costs of
31 copying any records or information gathered by the video
32 service and supplied to the subscriber.

33 (e) Upon a subscriber's application for video service,
34 including, but not limited to, interactive service, a video
35 service *provider* shall provide the applicant with a
36 separate notice in an appropriate form explaining the
37 subscriber's right to privacy protection afforded by this
38 section.

39 ~~(f) Subscribers must be afforded the right to elect not~~
40 ~~to receive interactive services or technology allowing the~~

~~1 video provider to collect, receive, aggregate, store or use~~
~~2 electronic information regarding a subscriber's television~~
~~3 viewing habits or any other personal information, without~~
~~4 being denied video services by the video provider (g).~~

~~5 (g)~~

6 (f) As used in this section:

7 (1) "Video provider" means any person, company, or
8 service that provides one or more channels of video
9 programming to a residence, including a home,
10 condominium, apartment or mobilehome, where a fee is
11 paid for that service, whether directly or included in dues
12 or rental charges, regardless of the method used to
13 deliver the video programming. A "video provider" shall
14 include, but not be limited to, a provider of cable
15 television, master antenna television, satellite master
16 antenna television, direct broadcast satellite, multipoint
17 distribution service, and any other method of providing
18 of video programming regardless of the technology used.
19 *A video provider shall not include an Internet Service*
20 *Provider unless that Internet Service Provider is directly*
21 *providing video programming services.*

22 (2) "Individually identifiable information" means any
23 information identifying an individual or his or her use of
24 any service provided by a video service other than the
25 mere fact that ~~such~~ *the* individual is a video service.

26 (3) "Person" includes an individual, business
27 association, partnership, corporation, limited liability
28 company, or other legal entity, and an individual acting
29 or purporting to act for or on behalf of any government,
30 or subdivision thereof, whether federal, state, or local.

31 (4) "Interactive service" means any service offered by
32 a cable television corporation involving the collection,
33 reception, aggregation, storage, or use of electronic
34 information transmitted from a subscriber to any other
35 receiving point under the control of the cable television
36 corporation, or vice versa.

37 ~~(h)~~

38 (g) Nothing in this section shall be construed to limit
39 the ability of a video provider to market cable television
40 or ancillary services to its subscribers.

~~(i)~~

(h) Any person receiving subscriber information from a video provider shall be subject to the provisions of this section.

~~(j)~~

(i) Any aggrieved person may commence a civil action for damages for invasion of privacy against any video provider, service provider, or person that leases a channel or channels on a cable television system that violates the provisions of this section.

~~(k)~~

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding one year, or by both ~~such~~ a fine and imprisonment.

~~(l)~~

(k) The penalties and remedies provided by subdivisions (d) and (k) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit of any person, and no judgment under this section shall preclude any person from obtaining additional relief based upon the same facts.

~~(m)~~

(l) The provisions of this section are intended to set forth minimum state standards for protecting the privacy of subscribers to cable television services and are not intended to preempt more restrictive local standards.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

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